

SANTA FE NUCLEAR, INC.

IBLA 80-238

Decided May 13, 1980

Appeal from decision of the Colorado State Office, Bureau of Land Management holding the Snow Bird No. 1 through Snow Bird No. 6 lode mining claims abandoned and void. C MC 147841.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The requirements are not met where documents are not received by the proper BLM office until Oct. 25, 1979, even though the claimant had the envelope date stamped by a different BLM office on Oct. 22, 1979, before mailing it to the proper office.

APPEARANCES: John N. Eddy, President, Santa Fe Nuclear, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Santa Fe Nuclear Inc. (Santa Fe) appeals the decision of the Colorado State Office, Bureau of Land Management (BLM), dated

November 27, 1979, declaring the Snow Bird No. 1 through Snow Bird No. 6 lode mining claims abandoned and void.

The decision stated that BLM cannot accept a certificate of location of a mining claim, with a date of location prior to October 21, 1976, which was not filed with BLM on or before October 22, 1979. All of appellant's claims were located prior to October 21, 1976. Appellant's filings were not received by BLM until October 25, 1979. BLM indicated that failure to file within the time period shall be deemed conclusively to constitute an abandonment of the mining claim.

On appeal, Santa Fe presents three reasons to justify the untimely filing: (1) It would have caused a representative of the company undue hardship to have driven the 800 miles from Santa Fe, New Mexico, to Denver, Colorado, to file the documents on October 22, 1979; (2) Santa Fe evidenced an intent to file timely by having the envelope date stamped on October 22, 1979, by the New Mexico State Office prior to mailing; and (3) the cost of restaking and refiling the claims would be considerable.

[1] Section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location] containing the information in paragraph (c) of this section shall be filed.

Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

Appellant did not file the documents required with the BLM office on or before October 22, 1979. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void 43 U.S.C. § 1744 (1976); 43 CFR 3833.1-2(a).

While we sympathize with appellant regarding the cost of restaking and refiling, the provisions of section 314 of FLPMA are mandatory. This Board is without authority to order recordation of a mining claim that is not in conformity with FLPMA.

Appellant's act of having the envelope date stamped by the New Mexico State Office prior to transmittal does not constitute timely filing of the documents in the Colorado State Office. Regulation 43 CFR 3833.1-2(a), quoted above, requires documents to be received and date stamped by the proper BLM office.

The "proper BLM office" is defined in the regulations at 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). The latter section states in turn that the office having jurisdiction over lands located in Colorado is BLM's Colorado State Office in Denver.

The documents had to be received and date stamped by the Colorado State Office by October 22, 1979, in order to be filed timely. C. F. Linn, 45 IBLA 156 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

